REMARKS

Receipt of the Office Action of March 8, 2005 is gratefully acknowledged.

Claims 1 -19 are pending in this reissue application. These have been rejected as unpatentable under 35 USC 102(d) over "applicant's PCT/EP96/04945."

This rejection is respectfully traversed.

A rejection based upon 35 USC 102(d) requires four conditions (MPEP § 706.02(e): (1) the foreign application must be filed more than 12 months before the effective filing date of the United States application; (2) the foreign and United States applications must be filed by the same applicant; (3) the foreign application must have actually issued as a patent....before the filing in the United States; and (4) the same invention must be involved.

Of the four noted conditions, condition (3) is not met by PCT/EP96/04945 because a PCT application ***is not*** a patent as patent is understood under 35 USC 102(d). It is a publication and a publication does not qualify

Claims 1 - 19 are also rejected as unpatentable under 35 USC 102(b) over "Simoes (DE19541222)

This rejection is also respectfully traversed.

For 35 USC 102(b) to apply the invention in DE19541222 must be another. Since the invention in DE19541222 is applicant/patentee, 35 USC 102(b) does not apply.

On page 3 of the Office Action, the examiner states that:

> "....the evidence indicates that applicant ***intentionally*** filed a regular application under 35 USC 111 without claiming priority to the international application." (emphasis added)

The failure to claim priority when filing the 09/135,486 application was ***not*** done intentionally. It was done to defer the payment of the filing fee which could not be done under 35 USC 371, but could be done under 35 USC 111. The

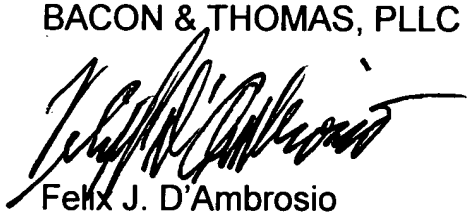
undersigned did not know when a filing under 35 USC 111 was recommended in order to defer the payment of the filing fee that the corresponding German application has issued as a patent, and the German attorney who authorized the filing of the U.S. national phase application did not realize the consequences of the issuance of the corresponding German application. If the undersigned knew that the corresponding German application had been patented then the filing under 35 USC 111 would not have been followed. Likewise if the German attorney had known of the consequences of the issuance of the corresponding German application he would have advised the undersigned that the corresponding German application had issued, and again the filing under 35 USC 111 would not have been followed. Instead, the applicant/patentee would have been advised by the undersigned through his German attorney that deferral of the filing fee could not be achieved.

These actions on the part of the undersigned and the German attorney were certainly not intentional.

In view of the foregoing, the examiner is urged to reconsider and withdraw both of the above noted rejections.

Respectfully submitted,

BACON & THOMAS, PLLC



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